IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALLIE FOFANA 948 Mcdade Blvd. Yeadon, PA 19050

v.

CIVIL ACTION

Plaintiff,

No.:

SOUTHWEST AIRLINES CO. *d/b/a* SOUTHWEST AIRLINES 800 Essington Avenue Philadelphia, PA 19153

JURY TRIAL DEMANDED

Defendant.

CIVIL ACTION COMPLAINT

Plaintiff, Allie Fofana (hereinafter referred to as "Plaintiff"), by and through his undersigned counsel, hereby avers as follows:

INTRODUCTION

1. Plaintiff has initiated this action to redress violations by Southwest Airlines Co. d/b/a Southwest Airlines (hereinafter "Defendant") of Title VII of the Civil Rights Act of 1964 ("Title VII" – 42 U.S.C. §§ 2000(d) et seq.), Section 1981 of the Civil Rights Act of 1866 ("Section 1981" – 42 U.S.C. § 1981), the Pennsylvania Human Relations Act ("PHRA"), and the Philadelphia Fair Practices Ordinance ("PFPO"). Plaintiff was unlawfully terminated by Defendant, and he suffered damages more fully described/sought herein.

¹ Plaintiff's claims under the PHRA and PFPO are referenced herein for notice purposes. He is required to wait 1 full year before initiating a lawsuit from date of dual-filing with the EEOC. Plaintiff must however file his lawsuit in advance of same because of the date of issuance of his federal right-to-sue-letter under Title VII. Plaintiff's PHRA and PFPO claims however will mirror identically his federal claims under Title VII.

JURISDICTION AND VENUE

- 2. This Court has original subject matter jurisdiction over the instant action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4) because it arises under the laws of the United States and seeks redress for violations of federal laws.
- 3. This Court may properly assert personal jurisdiction over Defendant because its contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendant to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945), and its progeny.
- 4. Pursuant to 28 U.S.C. § 1392(b)(1) and (b)(2), venue is properly laid in this district because Defendant is deemed to reside where it is subjected to personal jurisdiction, rendering Defendant a resident of the Eastern District of Pennsylvania.
- 5. Plaintiff is proceeding herein (in part) under Title VII after properly exhausting all administrative remedies with respect to such claims by timely filing a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") and by filing the instant lawsuit within ninety (90) days of receiving a notice of dismissal and/or right to sue letter from the EEOC.

PARTIES

- 6. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
 - 7. Plaintiff is an adult individual, with an address set forth in the caption.
- 8. Defendant is a major United States airline headquartered in Dallas, Texas, with terminals in several states (including Pennsylvania). Plaintiff was hired through and worked at Defendant's Philadelphia International Airport terminal with an address set forth in the caption.

9. At all times relevant herein, Defendant acted by and through its agents, servants and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for the Defendant.

FACTUAL BACKGROUND

- 10. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
 - 11. Plaintiff is a black male from Africa (Sierra Leone).
- 12. Plaintiff was employed by Defendant as a ramp agent from in or about October of 2011 until his unlawful termination (as discussed *infra*) on or about October 3, 2018.
- 13. While employed with Defendant, Plaintiff was a hard-working employee who performed his job well.
- 14. Toward the end of his tenure with Defendant, Plaintiff and two black (African) coworkers,² Kani Amadou Meite (*hereinafter* "Meite") and Ope Molley (*hereinafter* "Molley"), were accused of violating Defendant's travel/guest pass policy.
- 15. For example, Defendant has a rewards program for employees which awards them travel/guest "passes," i.e. the right to "nonrevenue travel" based on employee attendance and work performance.³
- 16. Defendant allowed Plaintiff and other employees to have a certain number of travel/guest passes to use for themselves or for certain classes of relatives and friends.

² Kani Amadou Meite and Ope Molley are from the African regions of the Ivory Coast and Liberia, respectively.

³ Upon Plaintiff's information and belief, taxes are subtracted from the original recipient's paycheck before the original recipient is able to redeem or transfer the travel/guest passes.

- 17. Defendant has policies applicable to the misuse and/or abuse of employee travel privileges known as the Employee Travel Privilege Policies ("ETPP").
- 18. Defendant's guest pass policy prohibits the "confirmed sale or confirmed attempted sale of any type of nonrevenue pass."
- 19. Upon Plaintiff's information and belief, he, Meite and Molley were targeted because of their race/national origin and Defendant's travel/guest pass policy was selectively enforced against them in a disparate manner.
- 20. For example, on or about September 27, 2018, Plaintiff was pulled from the breakroom and informed by Defendant's management that Defendant's corporate representatives and management needed to meet with him immediately to discuss travel/guest passes.
- 21. Present at the September 27, 2018 meeting were Plaintiff; Defendant's Security Manager, Ann Marie Donalson (Caucasian, hereinafter "Donalson"); Senior Manager of Business and Operations Services, Robert Dusseau (Caucasian, hereinafter "Dusseau"); Security Investigator, Kayla Rolen (Caucasian, hereinafter "Rolen"); Station Manager, Merissa Kapelinski (Caucasian, hereinafter "Kapelinski"); and union representative, Emory Marshall (African-American, hereinafter "Marshall").
- 22. During the September 27, 2018 meeting, Donalson informed Plaintiff that Defendant was investigating travel/guest pass abuse and hostilely questioned Plaintiff as to how he acquired travel/guest passes from co-workers, whether he had paid his supervisors or co-workers for the travel/guest passes, and if he was giving them to individuals outside of Defendant.
- 23. In response to Donalson's aforementioned questions at the September 27, 2018 meeting, Plaintiff informed her that: (1) he did not purchase or sell any travel/guest passes; (2) any

travel/guest passes given to him or his black (African) co-workers were gifts; and (3) he gifted travel/guest passes to family and friends for travel purposes.

- 24. Donalson also asked Plaintiff if his friend's cousin had purchased a travel/guest pass from Plaintiff for \$100.00 to travel from Orlando, Florida to Phoenix, Arizona. Plaintiff replied that he did not know what Donalson was referring to as he had never requested or received any money for any travel/passes that he received as gifts or gifted to friends or relatives.
- 25. After informing Donalson that he had never requested or received any money for a travel/guest pass utilized by his friend's cousin, Plaintiff inquired as to why Donalson was not talking to the supervisors or co-workers (predominantly Caucasian) who had transferred passes to him to which Donalson replied, "we are talking to you."
- 26. On or about October 3, 2018, Plaintiff was provided with a notice from supervisor Sean Burns (Caucasian, *hereinafter* "Burns") stating that his attendance was required at a fact-finding meeting.
- 27. At the fact-finding meeting on or about October 3, 2018, Burns provided Plaintiff with a memorandum that stated Defendant had concluded that Plaintiff was "involved in the buying and selling of Southwest Airline Guest Passes" and that his employment with Defendant was "terminated effective immediately." Defendant's management immediately escorted Plaintiff to retrieve his belongings and to leave Defendant's premises.
- 28. Plaintiff believes and therefore avers that Defendant's purported reason for terminating him—that he was involved in the buying and selling of Defendant's travel/guest passes—is completely pretextual because (1) Plaintiff was a hard-working employee who performed his job well; (2) Plaintiff never bought or sold Defendant's travel/guest passes; (3) while Plaintiff contests buying or selling travel/guest passes, Defendant's ETPP prohibits **only** the selling or

attempted selling of guest passes; (4) Plaintiff and other African employees were treated disparately because of race/national origin (as discussed *supra*); (5) upon Plaintiff's information and belief, Plaintiff's African co-workers, Meite and Molley, were terminated for allegedly having committed the same or similar conduct for which Plaintiff was alleged to have committed and for which he was terminated, and (6) other Caucasian employees who have committed the same or similar conduct, for which Plaintiff was alleged to have committed and for which he was terminated, have not been questioned, disciplined, suspended, or terminated.

29. Plaintiff believes and therefore avers that he was terminated because of his race/national origin.

COUNT I <u>Violation of Title VII of the Civil Rights Act of 1964 ("Title VII")</u> (Race/National Origin Discrimination)

- 30. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
- 31. During Plaintiff's employment with Defendant, he was subjected to discrimination and disparate treatment with regard to Defendant's policies and termination because of his race/national origin.
- 32. Plaintiff was abruptly terminated on or about October 3, 2018, for pretextual reasons.
- 33. Plaintiff believes and therefore avers that he was terminated because of his race/national origin.
 - 34. These actions as aforesaid constitute violations of Title VII.

COUNT II Violation of 42 U.S.C. Section 1981 (Racial Discrimination)

- 35. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
- 36. During Plaintiff's employment with Defendant, he was subjected to discrimination and disparate treatment with regard to Defendant's policies and termination because of his race.
- 37. Plaintiff was abruptly terminated on or about October 3, 2018, for pretextual reasons.
 - 38. Plaintiff believes and therefore avers that he was terminated because of his race.
- 39. These actions as aforesaid constitute unlawful discrimination under Section 1981.

 WHEREFORE, Plaintiff prays that this Court enter an Order providing that:
- A. Defendant is to promulgate and adhere to a policy prohibiting discrimination and retaliation in the future against any employee(s);
- B. Defendant is to compensate Plaintiff, reimburse Plaintiff, and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendant's illegal actions, including but not limited to back pay, front pay, salary, pay increases, bonuses, insurance, benefits, training, promotions, reinstatement and seniority;
- C. Plaintiff is to be awarded punitive damages, as permitted by applicable law, in an amount believed by the Court or trier of fact to be appropriate to punish Defendant for its willful, deliberate, malicious and outrageous conduct and to deter Defendant or other employers from engaging in such misconduct in the future;

- D. Plaintiff is to be accorded other equitable and legal relief as the Court deems just, proper and appropriate (including but not limited to damages for emotional distress, pain, suffering and humiliation); and
- E. Plaintiff is to be awarded the costs and expenses of this action and reasonable attorney's fees as provided by applicable federal and state law.

Respectfully submitted,

KARPF, KARPF & CERUTTI, P.C.

By:

Ari R. Karpf, Esq.

3331 Street Rd.

Two Greenwood Square, Suite 128

Bensalem, PA 19020

(215) 639-0801

Dated: April 12, 2019

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

Allie Fofana		:	CIVIL ACTION	•		
v.		:		19		
Southwest Airlines Co. d/b/	a Southwest Airl	ines;	NO.			
plaintiff shall complete a Ca filing the complaint and serv side of this form.) In the c designation, that defendants	se Management e a copy on all de- event that a defe shall, with its fir rties, a Case Ma	t Track Desig efendants. (S endant does rst appearanc unagement T	y Reduction Plan of this court, coung gnation Form in all civil cases at the take § 1:03 of the plan set forth on the not agree with the plaintiff regarding, submit to the clerk of court and serack Designation Form specifying the gned.	ime of everse g said tve on		
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a) Habeas Corpus - Cases brought under 28 U.S.C. § 2241 through § 2255.						
(b) Social Security - Cases and Human Services der	requesting revie lying plaintiff S	w of a decis	ion of the Secretary of Health ty Benefits.	()		
c) Arbitration – Cases requ	ired to be design	nated for arb	oitration under Local Civil Rule 53.2,	()		
d) Asbestos – Cases involvexposure to asbestos.	ing claims for p	ersonal injui	ry or property damage from	()		
 e) Special Management – C commonly referred to as the court. (See reverse s management cases.) 	complex and th	nat need spec	cial or intense management by	()		
f) Standard Management -	Cases that do n	ot fall into a	ny one of the other tracks.	(X)		
4/12/2019 Date	Attorney	at-law	Plaintiff Attorney for			
(215) 639-0801	(215) 639-4	970	akarpf@karpf-law.com			
Telephone	FAX Nur	mber	E-Mail Address			

(Civ. 660) 10/02

Case 2:19-cv-01595 Document 1 Filed 04/12/19 Page 10 of 11 UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM
(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 948 McDade Blvd, Yeadon, PA 19050							
Address of Defendant: 800 Essington Avenue, Philadelphia, PA 19153							
Place of Accident, Incident or Transaction: Defendant's place of business							
RELATED CASE, IF ANY:							
Case Number: Judge: Date Terminated:							
Civil cases are deemed related when Yes is answered to any of the following questions:							
1. Is this case related to property included in an earlier numbered suit pending or within one year Yes No X previously terminated action in this court?							
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit Yes No X pending or within one year previously terminated action in this court?							
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court?							
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights Yes No X							
I certify that, to my knowledge, the within case is / is not related to any case now pending or within one year previously terminated action in this court except as noted above.							
DATE: 4/12/2019 ARK2484 / 91538							
Attorney-at-Law / Pro Se Plaintiff Attorney I.D. # (if applicable)							
CIVIL: (Place a √ in one category only)							
A. Federal Question Cases: B. Diversity Jurisdiction Cases:							
1. Indemnity Contract, Marine Contract, and All Other Contracts 2. FELA 1. Insurance Contract and Other Contracts 2. Airplane Personal Injury							
□ 3. Jones Act-Personal Injury □ 3. Assault, Defamation □ 4. Antitrust □ 4. Marine Personal Injury							
5. Patent 5. Motor Vehicle Personal Injury 6. Labor-Management Relations 6. Other Personal Injury (Please specify):							
▼ 7. Civil Rights							
9. Securities Act(s) Cases 9. All other Diversity Cases							
11. All other Federal Question Cases							
(Please specify):							
ARBITRATION CERTIFICATION							
(The effect of this certification is to remove the case from eligibility for arbitration.)							
I, Ari R. Karpf , counsel of record or pro se plaintiff, do hereby certify:							
Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:							
exceed the sum of \$150,000.00 exclusive of interest and costs:							

JS 44 (Rev. 06/17)

Print -

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.

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I. (a) PLAINTIFFS				DEFENDANTS					
FOFANA, ALLIE				SOUTHWEST AIRLINES CO. d/b/a SOUTHWEST AIRLINES					
(b) County of Residence of First Listed Plaintiff Delaware (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorneys (Firm Name, Address, and Telephone Number) Karpf, Karpf & Cerutti, P.C.; 3331 Street Road, Two Greenwood Suite 128, Bensalem, PA 19020; (215) 639-0801; akarpf@karpf-									
II. BASIS OF JURISD	ICTION (Place an "X" in One	Box Only)	III. CI	TIZENSHIP OF P	RINCIPA	L PARTIES	(Place an "X" in Or	e Box for	Plaintif
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VIII. RELATED CASE IF ANY	(See instructions):	UDGE			DOCKE	T NUMBER			
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